JUDICIAL REFORM INDEX

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CROATIA

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Introduction

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association's Central and East European Law Initiative (ABA/CEELI). Its purpose is to assess a cross-section of factors important to judicial reform in emerging democracies. In an era when legal and judicial reform efforts are receiving more attention than in the past, the JRI is an appropriate and important assessment mechanism. The JRI will enable ABA/CEELI, its funders, and the emerging democracies themselves, to better target judicial reform programs and monitor progress towards establishing accountable, effective, independent judiciaries.

ABA/CEELI embarked on this project with the understanding that there is not uniform agreement on all the particulars that are involved in judicial reform. In particular, ABA/CEELI acknowledges that there are differences in legal cultures that may make certain issues more or less relevant in a particular context. However, after a decade of working in the field on this issue, ABA/CEELI has concluded that each of the thirty factors examined herein may have a significant impact on the judicial reform process. Thus, an examination of these factors creates a basis upon which to structure technical assistance programming and assess important elements of the reform process.

The technical nature of the JRI distinguishes this type of assessment tool from other independent assessments of a similar nature, such as the U.S. State Department's *Human Rights Report* and Freedom House's *Nations in Transit*. This assessment will *not* provide narrative commentary on the overall status of the judiciary in a country. Rather, the assessment will identify specific conditions, legal provisions, and mechanisms that are present in a country's judicial system and assess how well these correlate to specific reform criteria at the time of the assessment. In addition, this analytic process will not be a scientific statistical survey. The JRI is first and foremost a legal inquiry that draws upon a diverse pool of information that describes a country's legal system.

Assessing Reform Efforts

Assessing a country's progress towards judicial reform is fraught with challenges. No single criteria may serve as a talisman, and many commonly considered factors are difficult to quantify. For example, the key concept of an independent judiciary inherently tends towards the qualitative and cannot be measured simply by counting the number of judges or courtrooms in a country. It is difficult to find and interpret "evidence of impartiality, insularity, and the scope of a judiciary's authority as an institution." Larkins, *Judicial Independence and Democratization: A Theoretical and Conceptual Analysis*, 44 AM. J. COMP. L. 611 (1996). Larkins cites the following faults in prior efforts to measure judicial independence:

> (1) the reliance on formal indicators of judicial independence which do not match reality, (2) the dearth of appropriate information on the courts which is common to comparative judicial studies, (3) the difficulties inherent in interpreting the significance of judicial outcomes, or (4) the arbitrary nature of assigning a numerical score to some attributes of judicial independence.

Id. at 615.

Larkins goes on to specifically criticize a 1975 study by David S. Clark, which sought to numerically measure the autonomy of Latin American Supreme Courts. In developing his "judicial effectiveness score," Clark included such indicators as tenure guarantees, method of removal, method of appointment, and salary guarantees. Clark, *Judicial Protection of the Constitution in Latin America*, 2 HASTINGS CONST. L. Q. 405 – 442 (1975).

> The problem, though, is that these formal indicators of judicial independence often did not conform to reality. For example, although Argentine justices had tenure guarantees, the Supreme Court had already been purged at least five times since the 1940s. By including these factors, Clark overstated . . . the independence of some countries' courts, placing such dependent courts as Brazil's ahead of Costa Rica's, the country that is almost universally seen as having the most independent judicial branch in Latin America.

Larkins, *supra*, at 615. Reliance on subjective rather than objective criteria may be equally susceptible to criticism. *E.g.*, Larkins, *supra*, at 618 (critiquing methodology which consisted of polling 84 social scientists regarding Latin American courts as little more than hearsay). Moreover, one cannot necessarily obtain reliable information by interviewing judges: "[j]udges are not likely to admit that they came to a certain conclusion because they were pressured by a certain actor; instead, they are apt to hide their lack of autonomy." Larkins, *supra,* at 616.

ABA/CEELI's Methodology

ABA/CEELI sought to address these issues and criticisms by including both subjective and objective criteria and by basing the criteria examined on some fundamental international norms, such as those set out in the *United Nations Basic Principles on the Independence of the Judiciary; Council of Europe Recommendation R(94)12 "On the Independence, Efficiency, and Role of Judges";* and *Council of Europe, the European Charter on the Statute for Judges.* Reference was also made to a Concept Paper on Judicial Independence prepared by ABA/CEELI and criteria used by the International Association of Judges in evaluating membership applications.

Drawing on these norms, ABA/CEELI compiled a series of 30 statements setting forth factors that facilitate the development of an accountable, effective, independent judiciary. To assist assessors in their evaluation of these factors, ABA/CEELI developed corresponding commentary citing the basis for the statement and discussing its importance. A particular effort was made to avoid giving higher regard to American, as opposed to European concepts, of judicial structure and function. Thus, certain factors are included that an American or European judge may find somewhat unfamiliar, and it should be understood that the intention was to capture the best that leading judicial cultures have to offer. Furthermore, ABA/CEELI reviewed each factor in light of its decade of experience and concluded that each factor may be influential in the judicial reform process. Consequently, even if some factors are not universally-accepted as basic elements, ABA/CEELI determined their evaluation to be programmatically useful and justified. The categories incorporated address the quality, education, and diversity of judges; jurisdiction and judicial powers; financial and structural safeguards; accountability and transparency; and issues affecting the efficiency of the judiciary.

The question of whether to employ a "scoring" mechanism was one of the most difficult and controversial aspects of this project, and ABA/CEELI debated internally whether it should include one at all. During the 1999-2001 time period, ABA/CEELI tested various scoring mechanisms. Following a spirited discussion with members of the ABA/CEELI's Executive and Advisory Boards, as well as outside experts, ABA/CEELI decided to forego any attempt to provide an overall scoring of a country's reform progress to make absolutely clear that the JRI is not intended to be a complete assessment of a judicial system.

Despite this general conclusion, ABA/CEELI did conclude that qualitative evaluations could be made as to specific factors. Accordingly, each factor, or statement, is allocated one of three values: *positive, neutral, or negative*. These values only reflect the relationship of that statement to that country's judicial system. Where the statement strongly corresponds to the reality in a given country, the country is to be given a score of "positive" for that statement. However, if the statement is not at all representative of the conditions in that country, it is given a "negative." If the conditions within the country correspond in some ways but not in others, it will be given a

"neutral." *Cf.* Cohen, *The Chinese Communist Party and 'Judicial Independence': 1949-59*, 82 HARV. L. REV. 972 (1969), (suggesting that the degree of judicial independence exists on a continuum from "a completely unfettered judiciary to one that is completely subservient"). Again, as noted above, ABA/CEELI has decided not to provide a cumulative or overall score because, consistent with Larkin's criticisms, ABA/CEELI determined that such an attempt at overall scoring would be counterproductive.

Instead, the results of the 30 separate evaluations are collected in a standardized format in each JRI country assessment. Following each factor, there is the assessed correlation and a description of the basis for this conclusion. In addition, a more in-depth analysis is included, detailing the various issues involved. Cataloguing the data in this way facilitates its incorporation into a database, and it permits end users to easily compare and contrast performance of different countries in specific areas and—as JRIs are updated—within a given country over time.

Social scientists could argue that some of the criteria would best be ascertained through public opinion polls or through more extensive interviews of lawyers and court personnel. Sensitive to the potentially prohibitive cost and time constraints involved, ABA/CEELI decided to structure these issues so that they could be effectively answered by limited questioning of a cross-section of judges, lawyers, journalists, and outside observers with detailed knowledge of the judicial system. Overall, the JRI is intended to be rapidly implemented by one or more legal specialists who are generally familiar with the country and region and who gather the objective information and conduct the interviews necessary to reach an assessment of each of the factors.

One of the purposes of the assessment is to help ABA/CEELI — and its funders and collegial organizations — determine the efficacy of their judicial reform programs and help target future assistance. Many of the issues raised (such as judicial salaries and improper outside influences), of course, cannot necessarily be directly and effectively addressed by outside providers of technical assistance. ABA/CEELI also recognizes that those areas of judicial reform that can be addressed by outsiders, such as judicial training, may not be the most important. Having the most exquisitely educated cadre of judges in the world is no guarantee of an accountable, effective, or independent judiciary; and yet, every judiciary does need to be well-trained. Moreover, the nexus between outside assistance and the country's judiciary may be tenuous at best: building a truly competent judiciary requires real political will and dedication on the part of the reforming country. Nevertheless, it is important to examine focal areas with criteria that tend toward the quantifiable, so that progressive elements may better focus reform efforts. ABA/CEELI offers this product as a constructive step in this direction and welcomes constructive feedback.

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Croatia Background

Legal Context

The Republic of Croatia is a constitutional parliamentary democracy, divided into three branches of government. The executive branch has an independently elected President. In the 1990s, the President had broad powers over many aspects of government. However, in February 2000, the reform-oriented Stjepan Mesic was elected President, and over the following year, the government proceeded to reduce these powers until they were largely limited to serving as the Head of State and Commander-in-Chief of the armed forces. The President of Parliament heads the legislative branch (the Sabor). The Sabor is charged with passing all laws in Croatia. The Prime Minister heads the Cabinet of Ministers.

The Supreme Court heads the third branch, the judiciary. The Ministry of Justice (the MOJ) maintains considerable control over the workings of the judiciary. The Constitutional Court is sometimes referred to as the fourth pillar or branch because it is not administratively part of the judiciary, but rather appointed and financed by the Sabor.

History of the Judiciary

From 1526 until 1918, Croatia was part of the Austrian (and later Austro-Hungarian) Empire. As a result, its legal system was formed out of this tradition. From 1918 until 1991, Croatia was part of Yugoslavia, and the Yugoslav communist period (1945-1991) also left important imprints on the Croatian judiciary. During this period, Croatia was a constituent Republic of the Yugoslav Federation. Croatia maintained its own court system, including a Supreme Court and Constitutional Court.

In 1991, the Republic of Croatia became the second constituent member of Yugoslavia to secede and declare independence. This was followed by a war between ethnic Serbs and Croats. Peace was made in 1995, and since then, Croatia has been rebuilding. Croatia has largely maintained its judicial structures from the Yugoslav period.

Structure of the Courts

The Croatian court system consists of regular courts, (the municipal and county courts), commercial courts, misdemeanor courts, the Administrative Court, the Supreme Court, and the Constitutional Court, which is not formally part of the judiciary. The Misdemeanor and High Misdemeanor Courts handle low-level offenses where the punishment is primarily monetary but may include up to two months' incarceration time. The Commercial Courts handle disputes relating to businesses and contracts. The High Commercial Court hears all appeals from the Commercial Courts. The Municipal Courts handle all general civil and most criminal trials. The largest, the Zagreb Municipal Court, handles some 30% of all cases. In criminal cases, the investigative judges at the County Courts are responsible for investigations, while Municipal Courts are responsible for trials. The County Courts hear appeals from the Municipal Courts and serve as the first instance trial court for criminal cases punishable by ten years' incarceration or more. The Administrative Court hears all cases relating to a final administrative decision by a government agency. Finally, the Supreme Court hears appeals from the High Misdemeanor Court, the High Commercial Court, the County Courts and the Administrative Court.

All of these courts are part of the Croatian Judicial system and are subject to the same appointment, advancement and disciplinary rules. The MOJ has significant administrative control over these courts.

The Croatian Constitutional Court rules upon the constitutionality of laws, regulations, government acts and elections. These matters can be brought directly from individuals, the Sabor, government ministries and any other Croatian entity. It also hears appeals from any court (via the Supreme Court), so long as they relate to constitutional issues. The Court can also review, *sua sponte*, the constitutionality of any law, regulation or act. It is not administratively or politically part of the judiciary. Its 13 members are appointed by the Sabor and serve eight-year terms.

Conditions of Service

Qualifications

By the time they take the bench, judges tend to be prepared for the basic requirements of the judiciary. All judges must have a formal, university level legal education before taking the bench. Municipal court judges are required to have graduated from law school, passed the bar exam, and have spent two years in an apprentice-like capacity within the courts. Higher courts' judges do not have any additional requirements, but generally, they have at least ten years' experience at the next lower level.

Appointment and Tenure

Judges are appointed by the State Judicial Council (the DSV), an independent body that is in charge of appointment, discipline and removal of judges. The DSV is composed of seven judges, two attorneys and two law professors. They are appointed by the Sabor. The DSV appoints new judges for an initial five-year probationary period. After five years, the DSV decides whether to dismiss the judge or convert the appointment to one of lifetime tenure.

Training

There is currently no official training program for Croatian judges. The MOJ has expressed interest in creating a judicial education center, but so far, no action has been taken. Judicial training programs are offered on an ad hoc basis and in a variety subjects. These programs are largely financed and organized by international organizations and governments.

Assessment Team

The Croatia JRI 2002 Analysis assessment team was led by Steven Austermiller. The other team members were Nenad Vukadinovic, Sandra Biber and Ana-Maria Blaic. The conclusions and analysis are based on interviews that were conducted in Croatia during the winter of 2001-2002 and relevant documents reviewed at that time. Records of relevant authorities and individuals interviewed are on file with ABA/CEELI.

Croatia JRI 2002 Analysis

The Croatia JRI 2002 Analysis reveals a new democracy moving forward in the reform process. Although the coalition government elected in 2000 has made some significant changes in the past two years, many of the final steps needed to solve the most critical problems (such as the 1.1 million case backlog or the lack of a judicial training system) will require further difficult and perhaps radical reform in the coming years. Croatia is about to become an official EU candidate, and this status will be an important context when considering these issues.

ABA/CEELI would like to underscore that the factor correlations and conclusions possess their greatest utility when viewed in conjunction with the underlying analysis. In this regard, ABA/CEELI invites comments and information that would enable it to develop better or more detailed responses in future JRI assessments. ABA/CEELI views the JRI assessment process to be part of an ongoing effort to monitor and evaluate reform efforts.

Table of Factor Correlations

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Factor 21	**Code of Ethics**	**Neutral**
Factor 22	**Judicial Conduct Complaint Process**	**Positive**
Factor 23	**Public and Media Access to Proceedings**	**Positive**
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Factor 25	**Maintenance of Trial Records**	**Negative**
VI. Efficiency		
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Factor 27	**Judicial Positions**	**Negative**
Factor 28	**Case Filing and Tracking Systems**	**Neutral**
Factor 29	**Computers and Office Equipment**	**Negative**
Factor 30	**Distribution and Indexing of Current Law**	**Negative**

I. Quality, Education, and Diversity

Factor 1: Judicial Qualification and Preparation

Judges have formal university level legal training and have practiced before tribunals or, before taking the bench, are required (without cost to the judges) to take relevant courses concerning basic substantive and procedural areas of the law, the role of the judge in society, and cultural sensitivity.

Conclusion	***Correlation: Neutral***
Formal legal education is a requirement for all judicial candidates, but new lower court judges are not generally required to have practiced before tribunals, nor are they given any training courses.	

Analysis/Background:

By the time they take the bench, judges tend to be prepared for the basic requirements of the judiciary. All judges must have a formal, university level legal education before taking the bench. Municipal court judges are required to have graduated from law school, passed the bar exam, and spent two years in an apprentice-like capacity within the courts. LAW ON COURTS, art. 49-50, O.G.R.C. No. 129/00 [hereinafter LAW ON COURTS].

However, prior to the apprentice period the vast majority of law graduates have no training in relevant practical skills. Students lack the opportunity to visit courts and witness court hearings. The schools are strong in theory and philosophy, but they are weak in practice skills.

There is no requirement that new judges have practice experience before tribunals either during or after law school. In addition, judges are not required to take any specific courses before taking the bench.

Therefore, the system relies to a large extent on the two-year apprentice period for practical skills preparation. The inherent problem there is a lack of uniformity. Some judges have excellent apprentice experiences, and some have bad ones.

Factor 2: Selection/Appointment Process

Judges are appointed based on objective criteria, such as passage of an exam, performance in law school, other training, experience, professionalism, and reputation in the legal community. While political elements may be involved, the overall system should foster the selection of independent, impartial judges.

Conclusion	***Correlation: Neutral***
A new selection regime has been established that mandates objective criteria. However, it is too early to determine whether, in practice, the new system will fully realize this mandate.	

Analysis/Background:

The constitutional provisions regulating judicial appointments were changed in December 2000. CONSTITUTION OF THE REPUBLIC OF CROATIA, art. 117-123, O.G.R.C.41/01 (consolidated and codified text) [hereinafter CONSTITUTION]. Related implementing legislation was also passed contemporaneously. *See, generally,* the 2000 amendments to the LAW ON STATE JUDICIAL COUNCIL, O.G.R.C 129/00 [hereinafter LAW ON STATE JUDICIAL COUNCIL] and the LAW ON COURTS, O.G.R.C. 129/00 [hereinafter LAW ON COURTS].

Under this regime, judges are appointed by the DSV, an independent body in charge of appointment, discipline and removal of judges. The DSV was changed from 15 members to 11, who are elected to a four-year term (instead of eight). The new composition is as follows: seven judges, two attorneys and two law professors. CONSTITUTION, art. 123. They are appointed by the Sabor, after each profession provides proposals. LAW ON STATE JUDICIAL COUNCIL, art. 3. The new Law on Courts also called for the creation of local Judges' Councils, to be formed at the county court level. LAW ON COURTS, art. 31 a.-n. Among other tasks, councils are charged with providing an opinion on candidates. *Id.* at art. 31 b.

This new law provides for fairly strong protections against political appointments. However, it has limitations. The main shortcoming is the lack of clearly defined objective criteria that these councils must use. In addition to the criteria mentioned under Factor 1, the Law on Courts states that a candidate must have "professional qualifications and proven work capacities . . ." *Id.* at art. 49. However, there is no further explanation of these criteria. Under the previous legislation and practice, the same criteria were used to appoint one candidate and not appoint another. Newly appointed members of the DSV have taken their office only in November 2001, and there have not been many new appointments. Thus, it is still early to make definitive conclusions as to how well the revised process is functioning.

Another concern expressed by numerous interviews is the new procedure in which the court presidents are being appointed. Under the previous rules, court presidents were appointed by the DSV under the same procedures as all other judges. The new legislation gives the power to appoint a court president to the Minister of Justice, after the local Judges' Council proposes three candidates. The MOJ has begun to appoint presidents. There is some concern that this process may ignore objective criteria, and instead, it will become an instrument to advance the MOJ's political agenda. In addition, some of the appointments involve dismissing the sitting court president where that president's term has not yet ended.

Factor 3: Continuing Legal Education

Judges must undergo, on a regular basis and without cost to them, professionally-prepared continuing legal education courses, the subject matters of which are generally determined by the judges themselves and which inform them of changes and developments in the law.

Conclusion	***Correlation: Negative***
There is no official system of continuing judicial education. There is no requirement that judges undergo training. Local and international sources tend to provide the only training, and that training is on an ad hoc basis.	

Analysis/Background:

Croatia has yet to implement a continuing judicial education system, but the new Law on Courts does refer to judicial education and professional development in several places. It essentially mandates that all interested parties—judges, the MOJ and the Supreme Court—are responsible for professional education. Article 62 mandates continuing legal education as an individual duty for each judge. LAW ON COURTS, art. 62. On the other hand, Article 64 provides that each judge has the right to continuing legal education. *Id.* at art. 64. Article 22 states that the Supreme Court should "provide for the professional development of judges". *Id.* at art. 22. Under Article 38, the MOJ is charged with "the education . . . of judges and other officials and employees . . ." *Id.* at art. 38. Many of the interviewees interpreted these provisions to mean that the MOJ should provide the funding and logistics needed for continuing judicial education, while the Supreme Court should be involved in coordinating the development of programs and selection of faculty.

However, the MOJ and the Supreme Court have been inactive in this area. In late 1999, the MOJ did set up a Center for the education of judges and other judicial officials. Unfortunately, the status of this Center is not clear. In the past two years, it operated almost exclusively through cooperation with various non-judicial bodies (mostly international organizations, such as ABA/CEELI) and on an ad hoc basis. Because the Ministry has not provided the Center with a staff, or a budget or any institutional organization, it is really only a "virtual center" at this point. The Ministry does have funding for legal education, but those funds are mostly spent on two large annual events in the seaside town of Opatija. These events do not actually entail judicial training or education, but are rather general legal conferences on civil and criminal matters.

To date, the Supreme Court has been involved in some judicial training, but it has not actively participated in creating a system of continuing judicial education. Local courts do perform some judicial education and training for internal purposes.

Factor 4: Minority and Gender Representation

Ethnic and religious minorities, as well as both genders, are represented amongst the pool of nominees and in the judiciary generally.

Conclusion	***Correlation: Neutral***
While there is room for improvement, given the ethnically based wars in which Croatia has been involved, ethnic minorities seem to be reasonably well represented in the judiciary. However, more information is needed before a definitive conclusion can be made. Both genders are well represented, but there is a dearth of women at the higher levels.	

Analysis/Background:

According to a 1999 government analysis, the judiciary's ethnic makeup, is:

Croat: 93.6%
Serb: 3.1%
Other: 3.3%

Role and Status of Judges in Croatia, *Symposium of the International Association of Procedural Law,* 4/2000, A. Uzelac, at 10.

Since the last census was held in 1990, there have been massive migrations of displaced Croats and Serbs as a result of the wars in Croatia and Bosnia. A census was completed in early 2001, but the government has not released the results, aside from a few items, such as total population. Therefore, it is difficult to determine whether the judiciary's ethnic makeup is in proportion to the country's population.

Some newspaper reports indicate that Serbs (the largest ethnic minority) presently make up around 6-7% of the population, down from around 12% in 1990. If these reports are accurate, then Serbs are underrepresented in the judiciary. Most interviewees indicated that they had no way of knowing whether ethnic minorities were underrepresented.

However, anecdotal reports from the interviewees indicate that there is significantly less discrimination in the hiring and promotion of Serbs than there was under the Tudjman regime. Some areas are more problematic than others. In Beli Manastir, a town formerly occupied by breakaway Serbs, the court carefully balances the judges in conformity with the local population's pre-war ethnic makeup. Most interviewees in Croatia indicate that Serbs are not singled out or discriminated against any more. However, Split, and possibly the rest of Dalmatia, seems to remain a problem area. One judge stated that during the reappointment process in the mid-1990s, he/she had to prove that he/she was not Serbian in order to keep that position. When viewed in the context of the recent conflicts, Croatia's ethnic diversity appears encouraging but needs further improvement.

Most Municipal courts appear to have equal or greater numbers of women than men. This is partly due to the fact that the municipal level positions are lower paid and traditionally less demanding on a judge's time. There are more young female judges than male judges and that may continue because there are more female law students than male law students. There is female representation at the higher levels, but it is not completely equal. The County Courts tend to have fewer women. Only a small percentage of the court presidents are women. Women are also underrepresented in the Supreme Court and Constitutional Court.

II. Judicial Powers

Factor 5: Judicial Review of Legislation

A judicial organ has the power to determine the ultimate constitutionality of legislation and official acts, and such decisions are enforced.

Conclusion	***Correlation: Positive***
The Constitutional Court has the power to determine the constitutionality of legislation and official acts. The decisions of the Constitutional Court are generally enforced, although there have been notable exceptions.	

Analysis/Background:

The Constitutional Court of the Republic of Croatia is a well-respected institution that has been charged with a number of important responsibilities. Among other things, the Court decides:

(1) on the conformity of laws with the Constitution;
(2) on the conformity of other regulations with the Constitution and the statutory law; and
(3) on the constitutionality of state agencies' actions, when fundamental human rights and freedoms have been implicated. CONSTITUTION, art. 128.

The Court is also charged with informing the Croatian Parliament about any constitutional problems arising out of the laws that are reviewed. *Id*.

The conditions for initiating the constitutional review procedure are regulated by the Constitutional Law on Constitutional Court. CONSTITUTIONAL LAW ON CONSTITUTIONAL COURT, O.G.R.C. 99-99 [hereinafter LAW ON CONSTITUTIONAL COURT]. If, in the course of a regular proceeding, a regular court concludes that a particular law or regulation is not in compliance with the Constitution, the court is to suspend the proceeding and ask the Supreme Court to consider submitting a request for constitutional review to the Constitutional Court. LAW ON COURTS, art. 24.

The judicial system is not the only place from which Constitutional Court cases originate. Many cases come from outside the courts. The list of subjects who can initiate Constitutional Court review includes the Sabor, the President, the Ombudsman, local government agencies and any individual or legal person. LAW ON CONSTITUTIONAL COURT, art. 34 and 59.

While the Constitutional Court is reasonably efficient, many interviewees noted that the Constitutional Court is getting clogged with many relatively trivial requests. This hampers the Court's ability to reach important decisions in a timely manner. In addition, interviewees indicate that the large number of requests to the Constitutional Court is beginning to create a perception that it is a court of fourth judicial instance (above the Supreme Court). This undermines the position of the Supreme Court. One interviewee mentioned judicial cases in which an appeal to the Supreme Court is not allowed, but the initiation of Constitutional review is possible, thereby turning the Constitutional Court into an alternative supreme court.

The decisions of the Constitutional Court are generally enforced, although there were cases in the past when they were not. For instance, in the mid-1990s, the Constitutional Court overruled some DSV decisions concerning judicial appointments, but the DSV did not comply.

Many of the interviewees emphasized that the Constitutional Court is not formally part of the Croatian Judiciary. The Court's members are not appointed in the same manner as in the judiciary; its funding is separate; and its members include a number of academics and non-judges. The Court's thirteen justices are elected by the Parliament to eight-year terms. CONSTITUTION, art. 125.

Factor 6: Judicial Oversight of Administrative Practice

The judiciary has the power to review administrative acts and to compel the government to act where a legal duty to act exists.

Conclusion	***Correlation: Neutral***

There is an Administrative Court that has the power to review administrative acts. The decisions are usually followed, but the implementation period is often unduly prolonged. In the past, the government was able to ignore certain decisions, but this state of affairs appears to be improving.

Analysis/Background:

The Croatian Constitution guarantees judicial review of administrative agencies' actions. CONSTITUTION, art. 19. The administrative procedure is regulated by the LAW ON GENERAL ADMINISTRATIVE PROCEDURE, O.G.R.C. 53/91 91 [hereinafter LAW ON GENERAL ADMINISTRATIVE PROCEDURE] and the LAW ON ADMINISTRATIVE DISPUTES, O.G.R.C. 53/91 [hereinafter LAW ON ADMINISTRATIVE DISPUTES]. This system was inherited from the Yugoslav law. The body that issued the administrative act in the first instance deals with the initial complaints. In the second instance, the decision is appealed to the relevant Ministry or similar government body. That higher-level executive body then issues a "final decision." The final administrative decision can be challenged in the Administrative Court. Appeals against the decisions of the Administrative Court are referred to the Supreme Court. To the extent that these decisions touch upon human rights issues, they can be referred to the Constitutional Court.

The judiciary can compel the government to act where a legal duty exists. In most cases, the judiciary's decisions are respected. The most common complaint is that the decisions take too long to be implemented. In the past, there were a few occasions where the government ignored the judiciary's order. To some extent, this problem is linked to the general problem that exists with the enforcement of all judicial decisions.

Factor 7: Judicial Jurisdiction over Civil Liberties

The judiciary has exclusive, ultimate jurisdiction over all cases concerning civil rights and liberties.

Conclusion	***Correlation: Positive***

The Croatian Judiciary has ultimate jurisdiction over cases concerning civil rights and liberties. In general, the courts are well prepared to handle most such cases.

Analysis/Background:

The Croatian Constitution provides numerous human rights and fundamental freedoms for its citizens. It provides that the judiciary will be the primary protector of these civil rights and liberties. *See,* CONSTITUTION, art. 14, 29 and 117. In addition, Croatia has signed most major international agreements guaranteeing such protections, including the European Convention for the Protection of Human Rights and Fundamental Freedoms. These rights are considered part of the internal legal regime and are above local law. CONSTITUTION, art. 140.

Local administrative bodies may initially hear some disputes that involve elements of civil rights. However, parties always have the right to appeal to a judicial court. Generally, courts respect civil rights laws that are in place. Both judge and non-judge interviewees felt that civil rights issues were handled quite well in the courts. Judges have knowledge of local legal standards and are willing to adhere to those standards when ruling. Some interviewees felt that judges do not have enough training or education relating to the international covenants to which Croatia is a signatory.

There is some anecdotal evidence that ethnic minorities, such as Serbs, do not get a fair trial at the local trial level, due to discrimination based on ethnicity. However, this was not considered widespread and was identified with only a few regions.

Factor 8: System of Appellate Review

Judicial decisions may be reversed only through the judicial appellate process.

Conclusion	***Correlation: Positive***
It is well established that judicial decisions may be reversed only through the judicial appellate process.	

Analysis/Background:

The Croatian Constitution guarantees the right to appeal under Article 18. CONSTITUTION, art. 18. The Law on Courts further clarifies this principal. Under Article 6, paragraph 2, "a judicial decision may be altered or annulled only by a court within whose jurisdiction a particular case falls, in a procedure regulated by law." LAW ON COURTS, art. 6.

In practice, the interviewees felt that this principle was followed. A few interviewees expressed concern about the fact that the frequent appeals to the Constitutional Court were causing reversals outside of the normal appeal process. In essence, that court was viewed as taking away some of the appeal power of the regular courts. Nevertheless, none of these interviewees felt that it was undermining the rule of law or that there was anything unfair about the process.

The only exception to this appellate review principle is the Croatian President's power to pardon individuals. CONSTITUTION, art. 98. This power is used sparingly enough that it does not undermine the principle of appellate review, although there have been some controversial cases.

Factor 9: Contempt/Subpoena/ Enforcement

Judges have adequate subpoena, contempt, and/or enforcement powers, which are utilized, and these powers are respected and supported by other branches of government.

Conclusion	***Correlation: Negative***
Judges do not have sufficient subpoena, contempt and enforcement powers. Those that they do have tend to be underutilized. There is also a lack of support from other branches of government.	

Analysis/Background:

There are various subpoena, contempt and enforcement mechanisms in the Croatian legal system. In theory, courts are given a variety of powers. For example, Articles 316 - 318 of the Law on Civil Procedure govern the powers available to a civil court judge to maintain courtroom discipline and sanction abuse of procedural rights. However, monetary sanctions can only be given after a reprimand has been issued. LAW ON CIVIL PROCEDURE, art. 316-318, O.G.R.C. 53/91 [hereinafter LAW ON CIVIL PROCEDURE]. The Law on Criminal Procedure regulates the same issues in articles 88-90 and 300 and similarly, sanctions are applied only after a reprimand is issued. LAW ON CRIMINAL PROCEDURE, O.G.R.C. 110/97 [hereinafter LAW ON CRIMINAL PROCEDURE].

Under the Law on Civil Procedure, Articles 248 and 255, witnesses may be punished for failure to appear (under subpoena) or answer questions. Interestingly, under Article 269, a *party* may not be coerced into appearing or testifying. LAW ON CIVIL PROCEDURE, art. 248,255, 269.

In reality, the courts have great difficulties in these areas, particularly in the civil courts. First, many judges complain that some routine orders can be disregarded with little to no consequence to the parties. For instance, attorneys and parties frequently fail to appear for hearings. At one court, the absentee rate for hearings is 33%. All the judge can usually do is reschedule. This can continue for years.

Second, the courts have to apply very cumbersome and complex notice procedures and rely upon the post office to serve legal orders. This service issue is a severe problem. Parties can evade service by changing their registered address or avoiding the local delivery person. Since there is no effective provision for abode service, the target person must be home and willing to answer the door when the delivery person rings. There is also no provision for private delivery so service is only attempted during working hours—when most people are at work or away from the home. A few smaller courts are using court staff for service of process to try to improve this situation. In the criminal courts, there are fewer problems with other government branches because the police have a better-defined and coordinated role in the judicial process.

However, the problem is not just a lack of powers but also a failure upon the part of judges to use them. Many interviewees admitted that the judges could be using the tools at hand more effectively. Judges, particularly young judges, do not use some of their powers because there is a lack of education about what a judge can do, including the uncertainty of the appellate court's reaction. Finally, many judges admitted that discipline just leads to an appeal, which further complicates the process.

Enforcement of judgments is an additional problem. The law is viewed as too cumbersome to be effective, and it often causes additional appeals. The execution of a civil judgment usually

requires the filing of a separate action, with a separate case number. *See, generally*, Law on Execution, O.G.R.C. 57/96, *as amended* at O.G.R.C. 29/99.

Amendments to the procedural laws which address some of these issues, are currently pending in the Sabor.

III. Financial Resources

Factor 10: Budgetary Input

The judiciary has a meaningful opportunity to influence the amount of money allocated to it by the legislative and/or executive branches, and, once funds are allocated to the judiciary, the judiciary has control over its own budget and how such funds are expended.

Conclusion	***Correlation: Negative***
The judiciary has virtually no opportunity to influence budgeting from the Ministry of Justice and the Parliament. Once funds are allocated, the Ministry closely supervises expenditures.	

Analysis/Background:

The judiciary relies on funding from the State Budget. LAW ON COURTS, art. 92. Usually, the judiciary has little to no input in the amounts allocated. Although the MOJ requests that the court presidents and the Supreme Court propose amounts of funds needed for their courts, *Id.* at , art. 92-3, those proposals tend to be reduced when the budget process moves forward. Most court presidents feel helpless and ignored with regard to influencing judicial funding. Courts do not even control the funds paid by parties, such as filing fees. Payments are generally made directly to the state treasury.

Once funds are allocated, the president for each court is responsible for expenditures but even here the MOJ retains control. For items greater than about $100, the Ministry must approve the expenditure. One court president commented that he could not purchase an office chair without MOJ approval.

Factor 11: Adequacy of Judicial Salaries

Judicial salaries are generally sufficient to attract and retain qualified judges, enabling them to support their families, and live in a reasonably secure environment without having to have recourse to other sources of income.

Conclusion	***Correlation: Neutral***
Judges' salaries are high relative to the Croatian average. However, for the past three years, judges have suffered significant pay cuts and the loss of seniority supplements.	

Analysis/Background:

As a result of efforts made by, among others, the Association of Croatian Judges, salaries for judges have doubled from those in the mid-1990s. Starting June 30, 2001, the monthly salaries are set roughly as follows:

Municipal Court judge:	900 USD
County Court judge:	1,250 USD
Supreme Court judge:	1,700 USD

These figures are significantly higher than the average wage for the country as a whole, which is under $450. The judicial salary increase of the late 1990s has helped halt the massive outflow of judges from the judiciary that took place in the early and mid-1990s.

Under the current system, judges do not receive any substantial merit pay or bonuses. The only way to get a large increase is to advance to the next court level. This system provides little incentive to become a better judge or work harder at a particular level. The best judges at each level tend to see no reward for their efforts, unless they are appointed to the next level. This has left the lowest level, the Municipal Courts, with less experienced judges. Many high-quality trial judges leave to go to the County level, where they do not usually conduct trials.

Recently, concern has arisen over salary reductions. Since 1999, judicial salaries have been cut twice, alongside other government salary cuts. Today, judicial salaries are an average 11% lower than those in 1999. In addition, for the last two years, there has been a suspension of the 0.5% salary supplement for each year of service. This means that first-year judges and say, 20-year judges, receive the same salary. Because this impacts more experienced judges disproportionately, the judiciary may begin losing these judges. Many interviewees felt that this trend is beginning to impact morale. If these trends continue, they may undo the progress achieved in the late 1990s, and the judiciary may see another exodus of the best and brightest out and into private practice.

Notwithstanding these disturbing trends, judges are still generally satisfied with their compensation levels, and they do not feel that there is a need to resort to alternative sources of income. It should be noted that unlike many in comparative professions, judges cannot earn income outside of their job.

Factor 12: Judicial Buildings

Judicial buildings are conveniently-located and easy to find, and they provide a respectable environment for the dispensation of justice with adequate infrastructure.

Conclusion	***Correlation: Negative***
Courthouses are easy to find, but material conditions are poor in many regions. In general, they do not provide a respectable environment for the dispensation of justice.	

Analysis/Background:

Courthouses do tend to be centrally located and are easy to find. While there is great variance in the quality of the conditions, in general, the government needs to allocate greater resources to the judiciary so as to enhance the public's respect for the judicial system.

The largest courthouse in the country, the Zagreb Municipal Court, houses over 150 judges in appalling conditions. Few judges have private offices. Most courtrooms are small and cramped and house old, dilapidated furniture. The civil judges at the Zagreb County Court, the largest appellate court, are housed four judges to an office. On the other hand, some courts are in excellent shape. The commercial courts in Split, for instance, are housed in modern, computer-equipped courtrooms with new furniture. The computers were mainly financed with international support. Some courthouses in formerly occupied areas have received special consideration and are in excellent shape. The president's office at most courts is large, comfortable and full of amenities.

Factor 13: Judicial Security

Sufficient resources are allocated to protect judges from threats such as harassment, assault and assassination.

Conclusion	***Correlation: Negative***
In some regions, judges suffer from threats and attacks. Little to no security is provided for these judges.	

Analysis/Background:

In 1999, a Zagreb Municipal Court judge and three other individuals were murdered when a party walked into court and shot everyone in sight. As result, the court received a metal detector and has at least one security officer on duty screening everyone who enters. However, there has been very little assistance to other courts. In some regions, such as Dalmatia, judges suffer from threats and occasionally violent attacks. Yet, most courts in those regions do not have any security officers to protect the judges or public.

The "judicial police" (bailiffs) are assigned to court security. Judicial police form a special department within the MOJ, and the court presidents direct the activities of the judicial policemen assigned to the court. The problem is that the Justice Ministry has allocated insufficient funding for this security division. As a result, only a few courts have a guard at the courthouse door.

An additional concern is out-of-court security. A Dalmatian court president complained that he is unsafe outside of his court. He feels he must avoid certain restaurants and change his home phone number each year.

IV. Structural Safeguards

Factor 14: Guaranteed tenure

Senior level judges are appointed for fixed terms that provide a guaranteed tenure, which is protected until retirement age or the expiration of a defined term of substantial duration.

Conclusion	***Correlation: Positive***
Senior level judges are appointed for life and have a guaranteed tenure.	

Analysis/Background:

Under the new rules, judges are initially elected to a five-year term. CONSTITUTION, art. 122. After that, they are subject to review by the DSV. If the judge passes DSV review, he or she is then automatically appointed for life (seventy years old is the mandatory retirement age). Under Article 52 of the Law on Courts, the DSV must follow certain objective criteria in making its determination. All judges currently on the bench are grandfathered in so they do not have to sit for the five-year review. Under the previous rules, all judges, including new judges, had been appointed for life.

Many interviewees supported this new rule because they felt that the quality of new judges is so poor that a future review process will help filter out future bad judges before they can obtain lifetime job security. However, the probationary rule could serve as a check on judges' independence. Another concern arises out of the fact that the DSV is also required to solicit opinions from a Sabor committee. LAW ON STATE JUDICIAL COUNCIL, art.18

One curious aspect to this new rule is the fact that even Supreme Court judges could be subject to the five-year probationary rule. Although all new appointments since the ratification of Article 122 have gone to sitting judges who would not be subject to the probation, it is theoretically possible that a law professor or attorney could be appointed. In that case, it appears that the individual would qualify as a "new" judge and be subject to the five-year probationary period. Aside from this circumstance, senior judges at the Supreme Court and all judges at the County Court level will have lifetime tenure.

Factor 15: Objective Judicial Advancement Criteria

Judges are advanced through the judicial system on the basis of objective criteria such as ability, integrity, and experience.

Conclusion	***Correlation: Neutral***
The new system provides for judges to be advanced on the basis of objective criteria, although the criteria are somewhat vague. It is too early to determine whether, in practice, the system will be objective.	

Analysis/Background:

The DSV is charged with judicial advancement. Interestingly, the Law on State Judicial Council does not actually address "advancement," but rather it equates advancement with the process of appointment. Under the Law on Courts, the DSV must consider certain criteria in making its decision. That includes the list of criteria found in the Law on Courts, Article 52, and the Law on State Judicial Council, Article 18, and the recommendations and findings of the local Judges' Councils and the MOJ.

Under Article 52, the criteria are the following:

> 1. Results of judges' work expressed through the quality of the work, number of decisions issued, and adherence to judicial timetables in conducting proceedings;
>
> 2. Professional knowledge;
>
> 3. Demonstrated diligence, persistence and conscientiousness in dealing with cases allocated;
>
> 4. The ability to express oneself orally and in writing, in the Croatian language and Latin script;
>
> 5. The ability to create a correct relationship with parties and their representatives, and ability to efficiently conduct court hearings;
>
> 6. The relationship with other judges and court employees and out-of-court behavior, if that behavior can impact the performance of judicial duties;
>
> 7. The participation and activities in the State Judicial Council and Judges' Councils;
>
> 8. Published professional and scientific works, participation and achievements in programs of professional education and other professional and scientific programs, activities in practical courses on legal topics and similar [matters]." LAW ON COURTS, art. 52.

As mentioned in Factor One of this JRI report, the amended Law on Courts (December 2000) includes the introduction of new Judges' Councils, to be formed at the county court level. *Id.* at art. 31(c). These councils shall (1) evaluate the judicial performance of a candidate; (2) issue opinions on candidates; and (3) propose candidates for court president. *Id.* at art. 31(b). In making its recommendations to the DSV, the local Judges' Councils are also supposed to consider the Article 52 criteria. The final decision on advancement/apppointment is with the DSV.

This process is currently being implemented, and it is too early to determine whether it will be objective. The rules provide for objective criteria to be considered. However, some interviewees felt that many of these criteria were still too vague. Given the past practice of advancement decisions being made through non-objective criteria, this issue remains a real concern.

Factor 16: Judicial Immunity for Official Actions

Judges have immunity for actions taken in their official capacity.

Conclusion	***Correlation: Positive***
Under the Croatian constitution, judges have immunity. This has been well respected in practice.	

Analysis/Background:

The Croatian Constitution states:

> Judges shall enjoy immunity in conformity with the law. Judges and lay-judges who take part in the administration of justice shall not be called to account for an opinion or a vote given in the process of judicial decision-making, except when a judge has violated the law. A judge may not be detained within a proceeding initiated for a criminal offense committed in the course of performance of a judicial duty without the approval of the State Judicial Council.

CONSTITUTION, art. 121

The interviewees felt that this was a sound and well-respected part of the judicial landscape. It should be noted that this protection is a slight downgrade from the previous immunity that judges enjoyed. Prior to 2000, judges enjoyed the complete immunity (not limited to the function of their office) that Sabor Members possess.

Factor 17: Removal and Discipline of Judges

Judges may be removed from office or otherwise punished only for specified official misconduct and through a transparent process, governed by objective criteria.

Conclusion	***Correlation: Positive***
Under the new laws, judges may be removed only for specified official misconduct and through a process that is ostensibly governed by transparent, objective criteria. Early indications are that the practice has not significantly deviated from this.	

Analysis/Background:

Judges may be removed only for specified official misconduct. Several laws regulate the discipline and removal of judges. First, the Croatian Constitution states that a judge shall be relieved of duty for only the following reasons: (1) at his/her own request, (2) if he/she becomes permanently incapacitated, (3) if he/she has been sentenced for a criminal offence which makes him/her unworthy, (4) if the DSV so orders in a disciplinary action, or (5) when the judge reaches seventy years of age. CONSTITUTION, art. 122.

Chapter V of the Law on State Judicial Council governs the disciplinary proceedings. Article 20 of that law lists the actions subject to discipline. They include abuse of position, failure to perform duties or negligent performance of them, conduct resulting in disruption of the court's operation,

violation of official secrets, or otherwise damaging the court's reputation. LAW ON STATE JUDICIAL Council, art. 20. Disciplinary proceedings are especially warranted:

> - if a judge, without a justified reason, does not develop and deliver judicial decisions within the prescribed period of time;
>
> - if a judges' council has evaluated a judge's work negatively (*See* art. 54 of the Law on Courts);
>
> - if, without a justified reason, the number of decisions a judge has delivered during the year is below the Croatian average.

Id. In addition, the Law on Courts in Articles 58 – 63 further defines these obligations of judges.

Disciplinary proceedings against a judge may be initiated by the president of a court in which a judge performs his duties, by a president of an immediately superior court, by the President of the Supreme Court, by the local Judges' Council or by the Minister of Justice. These complaints are submitted to the DSV. The request for initiation must be submitted in writing and contain, among other things, a description of the offending act, a proposal of sanction, and an explanation proving a well-founded suspicion.

The procedure provides numerous due process protections. The DSV first holds a preliminary hearing in which the judge in question and the petitioner are summoned. If it is established that there is a well-founded suspicion that a disciplinary act has been committed, then the DSV undertakes an investigation. If necessary, the DSV may appoint a neutral judge to perform the investigatory actions. If the petitioner proposes a sanction of dismissal, the DSV may decide on temporary removal from office while the case is pending. The judge in question has the opportunity to defend himself/herself alone or through a defense counsel of his/her choice. Once the investigatory actions are completed, the DSV holds a hearing. The procedural rules follow those of the Law on Criminal Procedure. These rules provide extensive protections for the defendant. Unlike the past proceedings, these proceedings are open to the media. The DSV's decision may be appealed to the Constitutional Court. Such an appeal postpones the enforcement of the decision.

From 1992 until 2001, the public was aware of only a few prosecutions. They were completed under the old rules and some were considered politically tainted. After taking office in November 2001, the new DSV has been very active. There were several disciplinary proceedings conducted, one ending with the removal of a judge who failed to deliver his written opinions more than seven years after the trials were completed.

Most of the interviewees believe that the new regime is fair in law and in practice, although some of them feel that disciplinary acts are still defined too broadly.

Factor 18: Case Assignment

Judges are assigned to cases by an objective method, such as by lottery, or according to their specific areas of expertise, and they may be removed only for good cause, such as a conflict of interest or an unduly heavy workload.

Conclusion	***Correlation: Neutral***
As a general rule, judges are assigned to cases by an objective method, but historically, the court presidents have had too much discretion to override the system.	

Analysis/Background:

The rules in place call for an alphabetical-chronological assignment of cases. This means that each new case filed gets assigned to the next name on an alphabetical list. Court presidents control this process. However, the system allows for court presidents to bypass that requirement in certain circumstances. Under Article 10 of the Law on Courts, the president may determine that a particular judge cannot handle a particular case and send it to someone else. Under the Rules of Court Procedure, art. 30-36, O.G.R.C. 80/97, a court president may exercise additional discretion to deviate from the assignment procedure, if it is done on an objective basis, for instance, to take into account judges' expertise or experience. While this is practical and arguably still an objective method of assignment, it allows for potential abuse. Interviewees indicated that this type of abuse was probably more of a problem in the past, but the system continues to provide discretion for court presidents that is broad and largely unchecked.

Factor 19: Judicial Associations

An association exists, the sole aim of which is to protect and promote the interests of the judiciary, and this organization is active.

Conclusion	***Correlation: Positive***
The Association of Croatian Judges is an active association dedicated to protecting the interests of the judiciary.	

Analysis/Background:

The Croatian Judges Association was founded in 1991. For a number of years, this association was a moribund institution. The new leadership was elected in late 1997, and the association renamed the Association of Croatian Judges (ACJ). Since then, the ACJ has achieved significant victories, such as increases in judicial salaries; the drafting of a new judicial ethics code; the induction into the International (European) Judge's Association; and the publishing of a quarterly magazine.

Only sitting judges can be members of the ACJ. About 80% of Croatian judges (around 1350 judges) are members of the ACJ. The ACJ is registered and has its own by-laws. The corporate structure consists of the ACJ Assembly, which meets once a year, the president, the supervisory board, and the managing board, which meets every one or two months. The ACJ is divided into

21 local branches. The membership dues are automatically deducted from judicial salaries, with 50% of the payment going to the local ACJ branch.

The ACJ has often publicly criticized the government for various actions. While this was in defense of the judges' interests, it has led to the perception that the ACJ is too combative in its approach. Although this factor had one of the highest positive correlation scores from interviewees, some ACJ members felt that the activities of the association are often limited to a narrow group of officers and that there should be wider participation from the membership.

V. Accountability and Transparency

Factor 20: Judicial Decisions and Improper Influence

Judicial decisions are based solely on the facts and law without any undue influence from senior judges (e.g., court presidents), private interests, or other branches of government.

Conclusion	***Correlation: Neutral***
Laws provide sanctions against improper influence, but public perception and anecdotal evidence indicate that low-level corruption exists in the judiciary. Several cases involving judicial corruption have been initiated in recent years.	

Analysis/Background:

Several laws provide explicit proscriptions against bribery or other improper influences on judges. Article 309 of the Criminal Code, O.G.R.C. 110/97, states:

> 1. Whoever makes demands on a judge . . . by force, threat or another form of coercion, to undertake actions or pass a decision . . . shall be punished by imprisonment for six months to five years.
>
> 2. Whoever . . . expounds his opinion in the media, at a public rally or in front of a body of persons on how the [judge] should act in this case . . .shall be punished by a fine of up to one hundred and fifty daily incomes or by imprisonment up to six months.

A similar provision exists in the Law on Courts, Article 6.

Virtually every judge interviewee felt that there was no bribery or other such direct efforts to influence judicial decisions. However, there was a substantially different feeling among the non-judge interviewees. Furthermore, there is a general perception in the Croatian public that such improper influence is common and that low-level corruption is endemic to the judiciary.

Some judge interviewees did admit that they had heard about pressures placed on some judges in certain cases. Most of these instances are alleged to have occurred during the Tudjman era. Some judges felt that a more subtle approach might sometimes be applied today. The court president might be able to direct a certain case to or away from a certain judge, which by itself might change the ultimate decision. Many judges did feel that the media sometimes pressured them by the way in which it reported on some ongoing cases. However, none admitted that this had any impact on decision-making.

Recently, there have been a number of disciplinary and criminal prosecutions of judges for alleged corruption. At the time of this assessment, it was unclear how many will result in convictions. It is interesting to note that these are the first such prosecutions in several years.

Factor 21: Code of Ethics

A judicial code of ethics exists to address major issues such as conflicts of interest, ex parte communications, and inappropriate political activity, and judges are required to receive training concerning this code both before taking office and during their tenure.

Conclusion	***Correlation: Neutral***
The ACJ completed a new judicial ethics code in 2000. It covers all standard ethical issues. However, it is not codified in law so it is enforced only to the extent that portions of the code are coextensive with certain legal proscriptions already in place.	

Analysis/Background:

The Judicial Ethics Code is modeled partially on American judicial ethics codes. It is purposely drafted in a general matter that tends to cover most significant ethical issues that judges face.

The Code is not enforced at present. There is no procedural framework or body charged with enforcement. It is also unclear whether the Code applies to the roughly 20% of judges who are not members of the ACJ.

Many of the Code's provisions, however, are enforced indirectly. The Law on Courts and the Law on State Judicial Council govern judges' behavior, and these laws are enforced with punishments ranging from reprimand to removal from the bench. These laws have very substantial overlap with the Judicial Ethics Code.

Judges are not required to take any training in their Ethics Code. In fact, the only such training available has been that offered by ABA/CEELI over the past two years.

Factor 22: Judicial Conduct Complaint Process

A meaningful process exists under which other judges, lawyers, and the public may register complaints concerning judicial conduct.

Conclusion	***Correlation: Positive***
There is an effective and utilized citizen complaint procedure.	

Analysis/Background:

The Croatian Constitution guarantees citizens' rights to impartial and efficient adjudications. CONSTITUTION, art. 29. The judiciary has an effective citizen complaint procedure regulated by the Law on Courts, art. 4. Usually, the citizen must begin the complaint process by notifying the court president of the judge's behavior. The citizen may also file a complaint directly with the MOJ. It is up to the individual president or the MOJ to determine whether the complaint is serious enough to warrant any action. In the most serious cases, the complaint must be forwarded to the DSV.

There seems to be general approval of the procedures. Citizens do use this procedure extensively, and the judges and authorities are fairly tolerant of the difficulties it sometimes causes. The interviewees generally expressed satisfaction with this regime.

Factor 23: Public and Media Access to Proceedings

Courtroom proceedings are open to, and can accommodate, the public and the media.

Conclusion	***Correlation: Positive***
While court proceedings are generally open to the public and media, lack of courtroom space hinders public access in some cases.	

Analysis/Background:

The Croatian Constitution provides for public access to all trials with only a few exceptions. Those exceptions include the interests of morality, public order, national security and privacy. In practice, the last exception is the only one that is used on a regular basis, usually in marital disputes or matters relating to minors. CONSTITUTION, art. 119. The morality or public order exceptions are vague and could be subject to abuse. Yet, in practice, they do not appear to be abused.

Generally, the practice conforms to international standards. The media does not seem to have any serious difficulties getting into trials, and most of the problems stem from space or resource constraints. One interviewee did complain that it was difficult for journalists and others to get accurate information about hearing dates since they are not generally available outside of the courthouse, except through the parties.

Factor 24: Publication of Judicial Decisions

Judicial decisions are generally a matter of public record, and significant appellate opinions are published and open to academic and public scrutiny.

Conclusion	***Correlation: Negative***
All final judicial dispositions are accompanied by a written opinion/decision. However, these decisions are rarely published and are generally unavailable to the public.	

Analysis/Background:

Croatian judges must draft a written decision to accompany any final judicial disposition. However, these decisions are almost never published. The Supreme Court and a few private publications publish some Supreme Court and other noteworthy decisions in abstract form, but usually months after the decision date. All Constitutional Court decisions are published in the Official Gazette. However, the vast majority of Croatian court decisions are not published or available to the public.

Parties always have a right to the written decision. A non-party may ask to review a particular written decision. The request must be made to the court president for the court out of which the decision was issued. If the president finds that the requesting individual has "justified interest" (sometimes called "legal interest"), the president makes the decision available. This decision is usually final.

There appears to be wide variation in what constitutes justified interest. Some court presidents indicated that a journalist writing a story on the case would usually have justified interest. However, others indicated that a journalist would not usually have access. An interested third party would not have access. An outside lawyer who had a similar issue might have justified interest to view the subject case's decision.

There is at least one private project (The Judge's Web) that provides an online searchable database of decisions. It relies upon voluntary contributions from judges for its decisions. At the moment, it is legally required to limit access to judges.

Factor 25: Maintenance of Trial Records

A transcript or some other reliable record of courtroom proceedings is maintained and is available to the public.

Conclusion	***Correlation: Negative***
All proceedings are recorded in summary format, and these summaries become a part of the case file. However, the public is usually not allowed to review these summaries.	

Analysis/Background:

Under the Croatian procedural laws, all proceedings must be "recorded". The recording works as follows: the judge listens to the questions and answers (often asking the questions him/herself), and then tells the court reporter what to write down. Usually, only things that the judge deems relevant are included. This is not a verbatim transcript of what was said. Since there is usually no tape or video recording of the proceeding, there is no verbatim transcript of what transpired at the hearing.

While the case is proceeding or under appeal, nobody except the parties has access to this transcript. However, once there has been a final disposition and all appeals have been exhausted, individuals who have a "justified interest" may review the transcript. As with court decisions, interested individuals must make the request to the court president who decides whether the individual has justified interest. Usually, presidents apply the same standard for "justified interest" here as they do for viewing the court decision.

VI. Efficiency

Factor 26: Court Support Staff

Each judge has the basic human resource support necessary to do his or her job, e.g., adequate support staff to handle documentation and legal research.

Conclusion	***Correlation: Negative***
Most judges do not have the basic human resource support necessary to do their jobs.	

Analysis/Background:

Most judges do not have the basic human resource support necessary to do their jobs. Other than court presidents, judges do not usually have secretaries to assist them. They do not have law clerks or filing clerks either. Their only assistance is a court-employed typist. In the Zagreb County Court, for instance, civil judges have the use of a typist only one day per week. In some county courts, there is a typist available two days per week. However, most municipal court judges have their own typists.

The interviewees felt that this was insufficient. In the larger courts, judges are asked to dispose of a large number of cases every month. A municipal court judge has 16 days to render a judgment, write a decision and serve a copy of this judgment to all the parties. According to a National Center for State Courts study, Zagreb Municipal Court judges spend an average of 119 days writing their final decisions. *Functional Specifications Report for Computerization in Zagreb Municipal Court for Republic of Croatia*, NCSC, 2001, at 15 [hereinafter NCSC Study].

Judges believed that the lack of human resource support make it difficult for them to draft these decisions in a timely manner. They often end up doing non-judicial tasks such as filing, labeling, copying, searching for a law, etc. This further reduces the time they can spend on writing decisions and performing other judicial tasks.

Factor 27: Judicial Positions

A system exists so that new judicial positions are created as needed.

Conclusion	***Correlation: Negative***
Judicial positions are determined by the Ministry of Justice. They are created on an as-needed basis. However, the position creation system is irrelevant because the government has not allocated enough resources to fill the current positions.	

Analysis/Background:

The Law on Courts regulates the process in which new positions are created. According to Article 47, the MOJ determines the number of positions for each court. The Extended Convention of the Supreme Court, which includes the Supreme Court Justices and representatives from the other courts, has the opportunity to provide the MOJ with a proposed number of new positions.

The MOJ uses a method of determination based upon the caseload of a jurisdiction. The final figure is derived by dividing the number of new cases filed in a given year by the quota of cases a jurisdiction is expected to complete during the year. The quota is set forth in local court rules, which establish annual "norms" of completed cases that each judge must meet. In practice, this norm has become a quota, with all the expected resulting problems.

However, the main problem is that the MOJ does not fill all the positions that it creates. In fact, most large courts have several positions unfilled. The Zagreb Municipal Court currently has around 15 unfilled judicial positions. These positions go unfilled because of a lack of resources. In many cases, there is no courtroom or office space for the unfilled positions. This means that the MOJ needs to find or build new courtrooms before it can fill the positions it has already created.

There is a related problem of balance in the judiciary. The courts in the cities tend to be heavily backlogged and need many more judges. However, many judges in rural areas are actually underutilized. This is partly the result of a 1992 administrative reorganization, whereby a number of new county and municipal courts were created, even in areas that did not really need their own court system. Thus, there are some newly-established courts, complete with presidents and judges, but no court facilities. Some of these judges receive salaries even though they have nowhere to work.

Factor 28: Case Filing and Tracking Systems

The judicial system maintains a case filing and tracking system that ensures cases are heard in a reasonably efficient manner.

Conclusion	***Correlation: Neutral***
The case filing and tracking system is still manual, but functions relatively well considering its inherent limitations. However, the lack of standardization of forms, awkward fee system and manual case assignment system contribute to delays in the processing of cases.	

Analysis/Background:

The case filing and tracking system is standardized in the Book of Rules. RULES OF COURT PROCEDURE, Part III, O.G.R.C. 80/97. Court cases are filed and processed in a court office and then forwarded to the court or division president for assignment to a judge. After that, the case file may stay with the judge or be moved to a storage location. The filing and tracking system is still manual without any substantial computerization. Although interviewees recognize that the judiciary has a huge case backlog (over 1.1 million in a country with a population of only 4.3 million people), many believed that this system worked well and that the inefficiency derives from other sources.

Although the system works reasonably well, the case filing and tracking system does cause some inefficiencies—the interviewees may have just lacked exposure to other systems. The NCSC

Study of the Zagreb Municipal Court identified a number of specific deficiencies. First, there is no standard format for the initial papers or complaints. This means that court personnel must spend extra time looking for mandatory information. Second, payment is not required at the time of filing, which often leads to delays at the start of a case as a judge must seek payment before proceeding. Third, the court or divisional president manually performs the case assignment process. This leads to long delays between filing and initial hearing. It also forces a president to spend extensive time on a non-judicial task. Finally, the case file is tracked in at least three different ledgers. This leads to duplicative work, confusion and ultimately, more delays. NCSC Study at 24-27.

In a few instances, a computerized tracking and management system is being introduced. The interviewees were enthusiastic about the prospects of computerizing this part of the court's management. Many felt that this would lead to more, and higher quality information, which judges would be able to use in the future debates relating to court reform.

Factor 29: Computers and Office Equipment

The judicial system operates with a sufficient number of computers and other equipment to enable it to handle its caseload in a reasonably efficient manner.

Conclusion	***Correlation: Negative***
While some courts are fully computerized, most lack computers and other equipment. Many of the computers that are in place were procured with international assistance.	

Analysis/Background:

The courts, unlike many other governmental bodies, do not have enough computers and other office equipment. However, there is a wide variance throughout the country. In a few courts, such as the Commercial Court in Split, or the Zagreb Municipal Court, there is a computer for every judge—financed from international sources. In many other courts, virtually no judge has a computer, and everyone must use old typewriters.

It was also observed that computers are not being used effectively. Many of the judges who did have computers were not connected to a local area network or the Internet. Not one user had legal materials compiled on floppy disk or CD-ROM. No case information was electronically available. The computer was used solely as a word processor. Thus, to some judges, the provision of a computer has been a mixed blessing. After receiving a computer, one judge lamented that she would now have to learn how to type. This is a general problem that extends from basic typing skills to more advanced computer skills.

Interestingly, Article 96 of the Law on Courts mandates that the Republic of Croatia must appropriately fund all equipment needs for the courts.

Factor 30: Distribution and Indexing of Current Law

A system exists whereby all judges receive current domestic laws and jurisprudence in a timely manner, and there is a nationally-recognized system for identifying and organizing changes in the law.

Conclusion	***Correlation: Negative***
There is a nationally recognized system for identifying and organizing changes in the law. However, judges generally do not have timely access to the publications that provide this information.	

Analysis/Background:

Judges do not receive laws in a timely manner. The problem here is distribution, not capacity. The official law gazette, called *Narodne Novine*, is published at least once a week and provides accurate, timely updates to laws. It actually serves as the delivery vehicle for laws—they become effective only after *Narodne Novine* publishes them. It provides the text of all new laws and shows the history of prior revisions. In addition, the private ING Register provides an indexing service that allows for the efficient searching of laws. This system works efficiently.

Unfortunately, these publications are not provided to most judges. In theory, every court receives one or more copies of *Narodne Novine*. The court president is then charged with distributing them to the judges. But, there are not enough for each judge, so some have to borrow copies from other judges and make photocopies. In many cases, judges spend substantial time searching for a copy among colleagues. One court president claimed that his court did not receive any copies. Judges rarely purchase their own subscriptions. They believe it is the MOJ's responsibility to provide these.

Interestingly, *Narodne Novine* has been available online for several years. At first, the service was free. Then it was changed to subscription access only. Recently, after public protests, the online service has been made available again for free.